



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0769; FRL- 10576-02-R4]

#### Air Plan Approval; NC; Transportation Conformity

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality (DEQ), Division of Air Quality (DAQ) on September 24, 2021. The SIP revisions replace previously approved memoranda of agreement (MOAs) with thirteen updated MOAs outlining transportation conformity criteria and procedures related to interagency consultation, conflict resolution, public participation, and enforceability of certain transportation-related control and mitigation measures. EPA is approving North Carolina's September 24, 2021, SIP revisions as they are consistent with the applicable provisions of the Clean Air Act (CAA or Act).

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification EPA-R04-OAR-2021-0769. All documents in the docket are listed on the [regulations.gov](https://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](https://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air

Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that, if possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9222 Ms. Sheckler can also be reached via electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

As described in a notice of proposed rulemaking (NPRM) published on February 7, 2023 (88 FR 7903), CAA section 176(c)(4)(E) and 40 CFR 51.390(b) require states to develop conformity SIPs that address three specific provisions of federal regulations. First, EPA's transportation conformity rule requires states to develop their own processes and procedures which meet the criteria in 40 CFR 93.105 for interagency consultation and resolution of conflicts among the federal, state, and local agencies. The SIP revision must include processes and procedures to be followed by the metropolitan planning organization (MPO), state Department of Transportation (DOT), and the United States Department of Transportation (USDOT) in consultation with the state and local air quality agencies and EPA before making conformity determinations. The conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs and the USDOT.

States may choose to develop, in place of regulations, an MOA which establishes the

roles and procedures for transportation conformity. The MOA includes the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including the USDOT's Federal Highway Administration, USDOT's Federal Transit Administration, and EPA.

North Carolina's September 24, 2021, conformity SIP revisions add new interagency partners and MPOs, establish new procedures for interagency consultation, dispute resolution, public participation and enforceability of certain transportation-related control measures and mitigation measures, and supersede the MOAs incorporated into the SIP on December 26, 2013. The list of MPOs for which North Carolina has established MOAs in the September 24, 2021, submission, include Burlington-Graham MPO, Cabarrus-Rowan MPO, Charlotte Regional Transportation Planning Organization, Durham-Chapel Hill-Carrboro MPO, Gaston-Cleveland-Lincoln MPO, Greater Hickory MPO, Greensboro Urban Area MPO, High Point Urban Area MPO, North Carolina Capital Area MPO, Rocky Mount Urban Area MPO, the Great Smoky Mountains National Park (NPS), and Rural Area (NC DOT).

Table 1, below, identifies the applicable national ambient air quality standards (NAAQS) for which each planning agency is required to implement transportation conformity, and therefore, establish interagency consultation procedures. As stated above, the MOAs are the documents which establish each area's interagency consultation procedures.

**Table 1. MOA Administrators and the Applicable NAAQS for Transportation**

<b>Conformity</b>	
<b>MOA Administrator</b>	<b>Applicable NAAQS</b>
Burlington-Graham MPO	1997 8-hour ozone and 1997 annual fine particulate matter (PM <sub>2.5</sub> ) NAAQS
Cabarrus-Rowan MPO	1997 8-hour ozone, 2008 8-hour ozone, and 2015 8-hour ozone NAAQS
Charlotte Regional Transportation Planning Organization	1971 carbon monoxide (CO), 1997 8-hour ozone, and 2008 8-hour ozone NAAQS

<b>MOA Administrator</b>	<b>Applicable NAAQS</b>
Durham-Chapel Hill-Carrboro MPO	1971 CO and 1997 8-hour ozone NAAQS
Gaston-Cleveland-Lincoln MPO	1997 8-hour ozone and 2008 8-hour ozone NAAQS
Greater Hickory MPO	1997 annual PM <sub>2.5</sub> NAAQS
Greensboro Urban Area MPO	1997 annual PM <sub>2.5</sub> NAAQS
High Point Urban Area MPO	1971 CO and 1997 annual PM <sub>2.5</sub> NAAQS
North Carolina Capital Area MPO	1971 CO and 1997 8-hour ozone NAAQS
Rocky Mount Urban Area MPO	1997 8-hour ozone NAAQS
Winston-Salem-Forsyth Urban Area MPO	1971 CO and 1997 annual PM <sub>2.5</sub> NAAQS
Rural (counties not covered by MPO, administered by NC DOT) <sup>1</sup>	1997 8-hour ozone NAAQS
Great Smoky Mountains National Park (administered by NPS)	1997 8-hour ozone NAAQS

In the February 7, 2023, NPRM, EPA proposed to approve updated MOAs for thirteen counties in North Carolina. The changes to the MOAs provide for updates to roles and responsibilities as they relate to transportation conformity. The details of North Carolina's submission and the rationale for EPA's action are explained further in the February 7, 2023, NPRM. Comments on the February 7, 2023, NPRM were due on or before March 9, 2023. No adverse comments were received.

## **II. Final Actions**

EPA is approving the aforementioned changes to the North Carolina SIP. Specifically, EPA is approving the replacement of previously approved MOAs with thirteen updated MOAs for the Burlington-Graham MPO, Cabarrus-Rowan MPO, Charlotte Regional Transportation

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<sup>1</sup> Person County is the only county subject to transportation conformity requirements per the 1997 8-hour ozone NAAQS that does not have an MPO responsible for it.

Planning Organization, Durham-Chapel Hill-Carrboro MPO, Gaston-Cleveland-Lincoln MPO, Greater Hickory MPO, Greensboro Urban Area MPO, High Point Urban Area MPO, North Carolina Capital Area MPO, Rocky Mount Urban Area MPO, the Great Smoky Mountains National Park (NPS), and Rural Area (NC DOT); outlining transportation conformity criteria and procedures related to interagency consultation; conflict resolution; public participation; and enforceability of certain transportation-related control and mitigation measures. This action also establishes consultation procedures and mitigation measures in the State of North Carolina. EPA is approving these actions because they are consistent with section 110 and 176 of the CAA and will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

### **III. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. These actions are not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 22, 2023.

**Daniel Blackman**  
*Regional Administrator,*  
*Region 4.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

#### **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart II – North Carolina**

2. In § 52.1770, amend the table in paragraph (e) by adding entries for the following at the end of the table:

- a. Burlington-Graham Interagency Transportation Conformity Memorandum of Agreement;
- b. Cabarrus-Rowan Interagency Transportation Conformity Memorandum of Agreement;
- c. Charlotte Regional Interagency Transportation Conformity Memorandum of Agreement;
- d. Durham-Chapel Hill-Carrboro Interagency Transportation Conformity Memorandum of Agreement;
- e. Gaston-Cleveland-Lincoln Interagency Transportation Conformity Memorandum of Agreement;
- f. Greater Hickory Interagency Transportation Conformity Memorandum of Agreement;
- g. Greensboro Urban Area Interagency Transportation Conformity Memorandum of Agreement;
- h. High Point Urban Area Interagency Transportation Conformity Memorandum of Agreement;
- i. North Carolina Capital Area Interagency Transportation Conformity Memorandum of Agreement;
- j. Rocky Mount Urban Area Interagency Transportation Conformity Memorandum of Agreement;
- k. Winston-Salem-Forsyth Urban Area Interagency Transportation Conformity Memorandum of Agreement;
- l. Rural (counties not covered by MPO, administered by North Carolina DOT) Interagency Transportation Conformity Memorandum of Agreement;



m. Great Smoky Mountains National Park (administered by NPS) Interagency

Transportation Conformity Memorandum of Agreement

The additions read as follows:

§ 52.1770 Identification of plan.

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(e) \* \* \*

**EPA-Approved North Carolina Non-Regulatory Provisions**

<b>Provision</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Federal Register citation</b>	<b>Explanation</b>
**	**	*	*	*
Burlington-Graham Interagency Transportation Conformity Memorandum of Agreement	1/30/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	
Cabarrus-Rowan Interagency Transportation Conformity Memorandum of Agreement	1/20/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	
Charlotte Regional Interagency Transportation Conformity Memorandum of Agreement	1/30/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	
Durham-Chapel Hill-Carrboro Interagency Transportation Conformity Memorandum of Agreement	1/30/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	

Gaston-Cleveland-Lincoln Interagency Transportation Conformity Memorandum of Agreement	1/30/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	
Greater Hickory Interagency Transportation Conformity Memorandum of Agreement	1/30/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	
Greensboro Urban Area Interagency Transportation Conformity Memorandum of Agreement	1/27/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	
High Point Urban Area Interagency Transportation Conformity Memorandum of Agreement	1/27/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	
North Carolina Capital Area Interagency Transportation Conformity Memorandum of Agreement	1/27/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	
Rocky Mount Urban Area Interagency Transportation Conformity Memorandum of Agreement	1/27/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	

Winston-Salem-Forsyth Urban Area Interagency Transportation Conformity Memorandum of Agreement	1/27/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	
Rural (counties not covered by MPO, administered by North Carolina DOT) Interagency Transportation Conformity Memorandum of Agreement	1/27/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	
Great Smoky Mountains National Park (administered by NPS) Interagency Transportation Conformity Memorandum of Agreement	1/30/2023	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	

[FR Doc. 2023-06425 Filed: 3/28/2023 8:45 am; Publication Date: 3/29/2023]